

E-filed: 3/16/2008

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC., HYNIX  
SEMICONDUCTOR AMERICA INC.,  
HYNIX SEMICONDUCTOR U.K. LTD., and  
HYNIX SEMICONDUCTOR  
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. CV-00-20905 RMW

ORDER REGARDING POST-*HITACHI*  
LITIGATION CONDUCT

RAMBUS INC.,

Plaintiff,

v.

HYNIX SEMICONDUCTOR INC., HYNIX  
SEMICONDUCTOR AMERICA INC.,  
HYNIX SEMICONDUCTOR  
MANUFACTURING AMERICA INC.,

SAMSUNG ELECTRONICS CO., LTD.,  
SAMSUNG ELECTRONICS AMERICA,  
INC., SAMSUNG SEMICONDUCTOR, INC.,  
SAMSUNG AUSTIN SEMICONDUCTOR,  
L.P.,

NANYA TECHNOLOGY CORPORATION,  
NANYA TECHNOLOGY CORPORATION  
U.S.A.,

Defendants.

No. C-05-00334 RMW

RAMBUS INC.,

Plaintiff,

v.

MICRON TECHNOLOGY, INC., and  
MICRON SEMICONDUCTOR PRODUCTS,  
INC.

Defendants.

No. C-06-00244 RMW

The parties have passionately argued whether post-*Hitachi* litigation conduct of the Manufacturers is relevant to any issue in the case as now being heard by the jury. The Manufacturers seek to preclude such evidence and argument. They argue that the evidence is irrelevant and that Rambus's attempt to portray the Manufacturers as big companies banding together to force Rambus out of business is highly prejudicial even if it has a modicum of relevance. Rambus, on the other hand, argues that evidence that the companies banded together to drive Rambus out of business is relevant to show that the Manufacturers did not incur attorneys' fees to defend against patent infringement claims brought by Rambus as part of a monopolization scheme

1 but rather to drive Rambus, an unwanted competitor, out of business. Although the Manufacturers  
2 complain about some evidence that has been admitted concerning Farhad Tabrizi's initial reactions  
3 and communications with his boss, Sang Park, about fighting Rambus to "the death of the Rambus  
4 company" and the cancellation of a scheduled meeting between Mr. Park and Mr. Tate, the focus of  
5 their motion is to preclude any evidence of the Manufacturers' litigation conduct through Rambus's  
6 further examination of Mr. Tabrizi, Mr. Appleton, Mr. Chung or otherwise. They also want an  
7 instruction advising the jury that joint litigation strategy efforts by defendants are proper to rebut  
8 Rambus's suggestions otherwise.

9 Rambus asserts that the evidence is relevant to causation and credibility. Rambus's causation  
10 argument seems to be that the Manufacturers incurred attorneys' fees primarily to drive Rambus out  
11 of business and not because Rambus was trying to capture the technology markets by asserting its  
12 patents' claims on certain JEDEC complaint products.<sup>1</sup>

13 The court finds Rambus's reasons for offering evidence concerning the post-*Hitachi* litigation  
14 tactics of Micron and Hynix unpersuasive and its argument to the jury potentially misleading and  
15 prejudicial. Evidence that Hynix and Micron stopped negotiating with Rambus despite Rambus's  
16 willingness to negotiate with them even after the institution of the *Hitachi* lawsuit is clearly relevant  
17 to show that Rambus, at least according to Rambus, was willing to negotiate a reasonable and non-  
18 discriminatory license with each of the Manufacturers. However, the argument that the primary  
19 cause of the Manufacturers' attorneys' fees was the Manufacturers' desire to force Rambus out of  
20 business for reasons unrelated to Rambus's claims of patent infringement is not supported by the  
21 evidence proffered and seems nonsensical in the context of this case. The Manufacturers may have  
22 wanted to drive Rambus out of business because of its assertion of infringement claims against  
23 JEDEC compliant products, but such a motivation does not constitute a superseding cause or defeat  
24 the causation element of the Manufacturers' antitrust claim if all other elements of an antitrust claim

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26 <sup>1</sup> Rambus also mentions, but has not stressed, an argument that the evidence rebuts the  
27 Manufacturers' "lock-in" claim. The theory apparently is that at least Hynix and Micron were not  
28 "locked-in" to the JEDEC standard technology and could have licensed Rambus's technology on a  
reasonable and non-discriminatory basis or change their designs but for the alleged promise between  
Hynix and Micron to not take a license from Rambus.

1 have been established. The way that the Manufacturers litigated may well affect the reasonableness  
2 of any fees incurred, but that issue is for later resolution if the Manufacturers win their antitrust  
3 claims. In this phase, the Manufacturers only need to show that some damage (attorneys' fees) were  
4 incurred by them as a result of Rambus's alleged antitrust violation.

5 The scope of Mr. Appleton's testimony. The court will allow Mr. Appleton to explain his  
6 correspondence with Mr. Tate regarding a meeting, his reasons for not going forward with the  
7 meeting as proffered by Mr. Price, and that Micron had no intent of entering into a license with  
8 Rambus. Rambus can cross-examine to show that Rambus remained willing to negotiate and would  
9 have liked to enter into a license. However, whether Micron entered into any joint defense  
10 agreements or developed a joint litigation strategy with Hynix or other manufacturers seems  
11 irrelevant. Even if cross-examination on any joint defense agreement or litigation coordination  
12 efforts has some marginal relevance regarding bias, the probative value is substantially outweighed  
13 by the risk of substantial prejudice and confusion of the issues.

14 There is no need for Mr. Appleton to testify about the foreign patent litigation as Dr. Gilbert  
15 used a United States geographic market, the foreign patent litigation raises a number of issues that  
16 would have to be explained, and the lawsuits were instituted after Micron filed suit and thus do not  
17 shed much additional light on Micron's intent in not taking a license and its alleged need to institute  
18 litigation.

19 The court believes that Hynix wishes to call D.S. Chung to provide similar testimony  
20 regarding Hynix's license negotiations with Rambus. As with Mr. Appleton, Mr. Chung may testify  
21 why Hynix chose to break off negotiations with Rambus. The same limits on cross-examination  
22 applicable to Mr. Appleton apply to Mr. Chung.

23 Argument regarding the Manufacturers' litigation conduct. Rambus's opening and transition  
24 statements suggest that one of Rambus's themes is that the large, conniving Manufacturers actually  
25 instigated the litigation to put an up-start innovator out of business. The court believes that any  
26 potential prejudice from statements made to date may be eliminated by taking judicial notice of the  
27 United States lawsuits between the parties and the claims therein. The court will also provide an  
28

1 instruction explaining the nature of a declaratory relief action. Further, if deemed necessary, the  
2 court can give a closing instruction that whether the Manufacturers engaged in joint litigation  
3 strategy is not relevant to the issue of whether Rambus engaged in conduct that violates the antitrust  
4 laws.

5  
6 DATED: 3/16/2008



RONALD M. WHYTE  
United States District Judge

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**Dated:** 3/16/08

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 Chambers of Judge Whyte